

## § 239.55

## 12 CFR Ch. II (1–1–16 Edition)

effective. The members will have an opportunity to file written comments, including objections and materials supporting the objections, with the Board.

(vi) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the conversion before the Board will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(vii) The Board might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(viii) Savings account holders will continue to hold accounts in the savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(ix) The mutual holding company's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(x) The savings association's business of accepting deposits and making loans will continue without interruption.

(xi) The current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(xii) The subsidiary savings association may continue to be a member of the Federal Home Loan Bank System.

(xiii) The mutual holding company may substantively amend the proposed plan of conversion before the members' meeting.

(xiv) The mutual holding company may terminate the proposed conversion.

(xv) After the Board approves the proposed conversion, the mutual holding company will send proxy materials providing additional information. After the mutual holding company sends proxy materials, members may telephone or write to the mutual holding company with additional questions.

(xvi) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the shares.

(xvii) A brief description of the circumstances under which supplemental

eligible account holders will receive subscription rights to purchase the shares.

(xviii) A brief description of how voting members may participate in the conversion.

(xix) A brief description of how directors, officers, and employees will participate in the conversion.

(xx) A brief description of the proposed plan of conversion.

(xxi) The par value (if any) and approximate number of shares that will be issued and sold in the conversion.

### (3) *Other requirements.*

(i) The mutual holding company may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of the shares upon conversion in the letter, notice, or press release.

(ii) If the mutual holding company responds to inquiries about the conversion, it may address only the matters listed in paragraph (c)(2) of this section.

(d) *Amending a plan of conversion.* The mutual holding company may amend its plan of conversion before it solicits proxies. After the mutual holding company solicits proxies, it may amend the plan of conversion only if the Board concurs.

## § 239.55 Filing requirements.

(a) *Applications under this subpart.* Any filing with the Board required under this subpart must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this subpart in accordance with § 238.14 of this chapter.

(b) *Requirements.* (1) The application for conversion must include all of the following information.

(i) A plan of conversion meeting the requirements of § 239.54(b).

(ii) Pricing materials meeting the requirements paragraph (g)(2) of this section.

(iii) Proxy soliciting materials under § 239.57(d), including:

(A) A preliminary proxy statement with signed financial statements;

(B) A form of proxy meeting the requirements of § 239.57(b); and

(C) Any additional proxy soliciting materials, including press releases, personal solicitation instructions,

## Federal Reserve System

## § 239.55

radio or television scripts that the mutual holding company plans to use or furnish to the members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(iv) An offering circular described in § 239.58(a).

(v) The documents and information required by Form AC. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(vi) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. See Form AC, instruction B(7).

(vii) The business plan, submitted as a separately bound, confidential exhibit. See paragraph (c) of this section.

(viii) Any additional information the Board requests.

(2) The Board will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

(c) *Filing an application for conversion.*

(1) The mutual holding company must file the application for conversion on Form AC with the appropriate Reserve Bank.

(2) Upon receipt of an application under this subpart, the Reserve Bank will promptly furnish notice and a copy of the application to the primary federal supervisor of any subsidiary savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(d) *Confidential treatment of portions of an application for conversion.* (1) The Board makes all filings under this subpart available to the public, but may keep portions of the application for conversion confidential under paragraph (d)(2) of this section.

(2) The mutual holding company may request the Board keep portions of the application confidential. To do so, the mutual holding company must sepa-

rately bind and clearly designate as "confidential" any portion of the application for conversion that the mutual holding company deems confidential. The mutual holding company must provide a written statement specifying the grounds supporting the request for confidentiality. The Board will not treat as confidential the portion of the application describing how the mutual holding company plans to meet the Community Reinvestment Act (CRA) objectives. The CRA portion of the application may not incorporate by reference information contained in the confidential portion of the application.

(3) The Board will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 261 of this chapter. The Board will advise the mutual holding company before it makes information the mutual holding company designated as "confidential" available to the public.

(e) *Amending an application for conversion.* To amend an application for conversion, the mutual holding company must:

(1) File an amendment with an appropriate facing sheet;

(2) Number each amendment consecutively;

(3) Respond to all issues raised by the Board; and

(4) Demonstrate that the amendment conforms to all applicable regulations.

(f) *Notice of filing of application and comment process*—(1) *Public notice of an application for conversion.* (i) The mutual holding company must publish a public notice of the application for conversion in accordance with the procedures in § 238.14 of this chapter. The mutual holding company must simultaneously prominently post the notice in its home office and in all of the branch offices of its subsidiary savings associations.

(ii) Promptly after publication, the mutual holding company must file a copy of any public notice and an affidavit of publication from each publisher with the appropriate Reserve Bank.

(iii) If the Board does not accept the application for conversion under § 239.55(g) and requires the mutual holding company to file a new application,

the mutual holding company must publish and post a new notice and allow an additional 30 days for comment.

(2) *Public comments.* Commenters may submit comments on the application in accordance with the procedures in § 238.14 of this chapter. A commenter must file any comments with the appropriate Reserve Bank.

(g) *Board review of the application for conversion—(1) Board action on a conversion application.* The Board may approve an application for conversion only if:

(i) The conversion complies with this subpart;

(ii) The mutual holding company will meet all applicable regulatory capital requirements after the conversion; and

(iii) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(2) *Board review of appraisal.* The Board will review the appraisal required by paragraph (b)(1)(ii) of this section in determining whether to approve the application. The Board will review the appraisal under the following requirements.

(i) Independent persons experienced and expert in corporate appraisal, and acceptable to the Board, must prepare the appraisal report.

(ii) An affiliate of the appraiser may serve as an underwriter or selling agent, if the mutual holding company ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(iii) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(iv) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(v) If the appraisal is based on a capitalization of the pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(vi) If the appraisal is based on a comparison of the shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(vii) The Board may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(viii) The mutual holding company may not represent or imply that the Board has approved the appraisal.

(3) *Board review of compliance record.* The Board will review the compliance record of the subsidiary savings association under the regulations applicable to the savings association and the business plan to determine how the conversion will affect the convenience and needs of its communities.

(i) Based on this review, the Board may approve the application, deny the application, or approve the application on the condition that the resulting stock holding company will improve the CRA performance or will address the particular credit or lending needs of the communities that it will serve.

(ii) The Board may deny the application if the business plan does not demonstrate that the proposed use of conversion proceeds will help the resulting stock holding company to meet the credit and lending needs of the communities that the resulting stock holding company will serve.

(4) The Board may request that the mutual holding company amend the application if further explanation is necessary, material is missing, or material must be corrected.

(5) The Board will deny the application if the application does not meet the requirements of this subpart, unless the Board waives the requirement under § 239.50(c).

(h) *Judicial review.* (1) Any person aggrieved by the Board's final action on the application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia

## Federal Reserve System

## § 239.57

Circuit, to review the action under 12 U.S.C. 1467a(j), which provisions shall apply in all respects as if such final action were an order, subject to paragraph (h)(2) of this section.

(2) To obtain court review of the action, the aggrieved person must file a written petition requesting that the court modify, terminate, or set aside the final Board action. The aggrieved person must file the petition with the court within the later of 30 days after the Board publishes notice of its final action in the FEDERAL REGISTER or 30 days after the mutual holding company mails the proxy statement to its members under § 239.56(c).

### § 239.56 Vote by members.

(a) *Mutual member approval of the plan of conversion.* (1) After the Board approves the plan of conversion, the mutual holding company must submit the plan of conversion to its members for approval. The mutual holding company must obtain this approval at a meeting of its members.

(2) The members must approve the plan of conversion by a majority of the total outstanding votes.

(3) The members may vote in person or by proxy.

(4) The mutual holding company may notify eligible account holders or supplemental eligible account holders who are not voting members of the proposed conversion. The mutual holding company may include only the information in § 239.54(c) in the notice.

(b) *Eligibility to vote for the plan of conversion.* The mutual holding company determines members' eligibility to vote by setting a voting record date. The mutual holding company must set a voting record date that is not more than 60 days nor less than 20 days before the meeting.

(c) *Notifying members of the meeting.* The mutual holding company must notify the members of the meeting to consider the conversion by sending the members a proxy statement.

(2) The mutual holding company must notify its members 20 to 45 days before the meeting.

(3) The mutual holding company must also notify each beneficial holder of an account at any subsidiary savings

association held in a fiduciary capacity:

(i) If the subsidiary savings association is a federal association and the name of the beneficial holder is disclosed on the records of the subsidiary savings association; or

(ii) If the subsidiary savings association is a state-chartered association and the beneficial holder possesses voting rights under state law.

(d) *Submissions to the Board after the members' meeting.* (1) Promptly after the members' meeting, the mutual holding company must file all of the following information with the appropriate Reserve Bank:

(i) A certified copy of each adopted resolution on the conversion.

(ii) The total votes eligible to be cast.

(iii) The total votes represented in person or by proxy.

(iv) The total votes cast in favor of and against each matter.

(v) The percentage of votes necessary to approve each matter.

(vi) An opinion of counsel that the mutual holding company conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(2) Promptly after completion of the conversion, the mutual holding company must submit to the appropriate Reserve Bank an opinion of counsel that the mutual holding company has complied with all laws applicable to the conversion.

### § 239.57 Proxy solicitation.

(a) *Applicability of proxy solicitation provisions.* (1) The mutual holding company must comply with these proxy solicitation provisions when the mutual holding company provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(2) Members of the mutual holding company must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to paragraph (f) of this section except where:

(i) The member solicits 50 people or fewer and does not solicit proxies on